IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

LRs of Kartar Singh Vs. Multan Ram
S.B. CIVIL FIRST APPEAL NO.149/20001

Against judgment and decree dated 31.03.2001 and 11.04.2001 (Amended Decree) passed by learned Addl. District Judge, Anoopgarh, District Sri Ganganagar in Regular Suit No. 104/98(99/91)–Multan Ram Vs. Kartar Singh.

DATE OF JUDGMENT :: 8th December, 2005.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

None present for appellants.
Mr. N.L. Joshi for respondent.

BY THE COURT:

This first appeal filed under Section 96 of Civil Procedure Code is directed against judgment and decree dated 31.03.2001 and 11.04.2001 (Amended Decree) passed by learned Addl. District Judge, Anoopgarh, District Sri Ganganagar in Regular Suit No. 104/98(99/91)–Multan Ram Vs. Kartar Singh.

On behalf of respondent, learned counsel Mr. N.L.Joshi is present. None has put in appearance on behalf of the appellants.

Briefly stated, the facts giving rise to the present case are that plaintiff-Shri Multan Ram filed a civil suit against Kartar Singh, Jangir Singh and Dalip Singh. Jangir Singh and Dalip Singh are the sons of late Shri Kartar Singh. It was the case of the plaintiff that an agreement to sale was executed on 03.02.1986, wherein agricultural land situated at Chak 4APM, Murabba No.313/419, Kila NO.1 to 12 total 12 bighas of land was sold by Kartar Singh. It was also stated in the agreement that the agricultural land was agreed to be sold at the rate of Rs.6500/-per bigha. The total value of the land, thus was Rs.78,000/-. Out of Rs.78,000/-, an amount of Rs.58,500/- was received by the defendants on the same day and possession of the land was also handed-over in part performance of the contract. Out of remaining amount Rs.19,500/-, it was agreed

between the parties that a sum of Rs.9,500/- was to be paid as instalment of due amount of the land which was sold to the plaintiff-respondent and thereafter the remaining amount was to be paid at the time of registry. Since, the defendants did not perform their part of contract, as such, the plaintiff-respondent filed a suit before learned Additional District Judge, Raisinghnagar, which afterwards came before learned Additional District Judge, Anoopgarh. It was prayed in the suit that the plaintiff-respondent was always ready and willing to perform his part of contract and despite asking several times, defendant-appellants did not agree to fulfill their part of contract, as such, the suit was filed with prayer that the defendants be directed to get the land registered in his favour. In alternate, it was also prayed that in case the defendants fail to get the agricultural land registered, then, the registry of the disputed land be got done through Court.

A written statement was filed by kartar Singh inter-alia stating therein that it was agreed between the parties that the land in question will be sold to the plaintiff. It has also been admitted in the written statement that a sum of Rs.58,500/- was received as consideration of disputed land and possession was also admitted. It was stated that since the plaintiff did not perform his part of contract and was never ready and willing to complete his part of contract, therefore, the plaintiff was not entitled to any relief. In additional plea, it was stated that after getting adjustment of the instalment due against the land, remaining amount of Rs.8064/- was also required to be paid to him which was not paid. It was prayed that since a part of contract was not perform by the plaintiff, as such, the suit was liable to be dismissed.

The learned trial court on the basis of pleadings of the parties framed following

issues :

(1) Whether the plaintiff complied with the terms of agreemand and was ready, willing and desireous to comply with the terms of the agreement ?

(2) Whether the plaintiff is entitled for a decree of specific performance of contract of suit land in his favour ?

(3) Whether the suit filed was within limitation ?

(4) Relief ?

On behalf of the plaintiff, PW1 Multan Ram(plaintiff himself) and PW2 Hariram were examined and tendered three documents in documentary evidence. On behalf of defendant, DW1 has been examined. The trial court after hearing both sides decreed the suit in favour of the plaintiff vide its judgment dated 31.03.2001 and the amended decree dated 11.04.2001.

Feeling aggrieved by the above judgment and the decree passed by the learned

trial court, the appellant-defendants have preferred this appeal. Since, nobody has put in appearance on behalf of the appellants, the matter has been heard in his absence.

Learned counsel for the respondent has submitted that the learned trial court has correctly assessed the evidence and committed no mistake while arriving at the conclusion that the plaintiff-respondent was always ready and willing to perform his part of contract and infact the defendants after executing the agreement to sale, received major part of the consideration for the suit land. It has further been submitted that infact entire amount has been paid and a sum of Rs.10,000/- remains due on his part which was to be paid at the time of registry, same has already been deposited in the trial court. He has further submitted that plaintiff was put in possession of the suit land immediately after the execution of the sale deed. It has further been submitted that one of the sons of Kartar Singh defendant in

relation to his share in the suit land got the registry done in favour of plaintiff. According to learned counsel, now in the above circumstances, it appears that the defendants have filed this appeal just to delay the matter and want to extract more money as the price of the suit land has increased immensely.

I have considered the above submissions made before me and also carefully perused the memo of appeal and the grounds stated therein.

In view of above submissions and the grounds of appeal contained in the memo of appeal, following points require consideration in the present case.

(1) Whether the trial court has correctly appreciated the evidence ?

(2) Whether the plaintiff-respondent had performed his part of contract and paid the major part of consideration in relation to suit land i.e. Rs.58,500/- at the time of execution of the agreement to sale

and was always willing to perform and has performed his part under the contract ?

(3) Whether any interference is required to be made in the judgment and decree passed by the learned trial court ?

The points framed relate to each other, therefore, they are being disposed of together.

The crux of the matter in the present case is whether there was any agreement between the parties regarding sale of the agricultural land i.e. 12 bighas at the rate of Rs.6,500/- per bigha. In para Nos.2 to 4 of the plaint, it was stated that an agreement was arrived at between kartar Singh and his sons and Multan Ram. Kartar Singh agreed to dispose of 12 bighas of agricultural land situated at Chak 4APM, Murabba No.313/419, Kila NO.1to 12, District Sri Ganganagar. In the above paras, it was stated that a sum of Rs.58,500/- was received and possession of the land was also handed-over to the plaintiff. Para Nos.2 to 4

of the plaint which infact are substantial in nature and also decide fate of the case, have been admitted by Kartar Singh.

PW1 Multan Ram, plaintiff in his statement before the Court has stated that Kartar Singh agreed to dispose of his land situated at Chak 4APM measuring 12 bighas at the rate of Rs.6,500/- per bigha. It has also been stated that agreement to sale Ex.2 was reduced in writing in this respect and Kartar Singh had put his thumb impression on Ex.2. It has also been stated that along with Kartar Singh his two sons Jangir Singh and Dalip Singh also put their signatures on Ex.2. It has further been stated that inspite of making payment in relation to the agricultural land, Kartar Singh did not perform his part of contract. It has further been stated that he was always ready and willing to perform his part of contract but Kartar Singh was never ready to perform his part of contract. A lengthy cross-examination was done with this

witness but averments with regard to the execution of the agreement to sale could not be denied. It further appears from the cross-examination that a sum of Rs.58,500/- was received at the time of agreement to sale executed between the parties.

PW2 is Hariram. He is the attesting witness and has proved Ex.2 agreement to sale. He has also proved the fact that at the time when Ex.2 was written a sum of Rs.58,500/- was paid to Kartar Singh.

DW1 Jangir Singh has not denied the factum of receiving Rs.58,500/- by his father at the time of executing the sale agreement. He has stated that there was some dispute between his father and the plaintiff-respondent in relation to some instalments due against his father.

The learned trial court after

considering the evidence led by parties came to the conclusion that the plaintiff had sufficiently proved his case and complied with the terms and conditions of the agreement to sale. It has further been found by the trial court that the plaintiff was ready and willing to perform his part of the contract, therefore, it decided the issues in favour of the plaintiff-respondent. Since, issue No.1 was decided in favour of the plaintiff, other issues, which were in relation to the suit were liable to be decreed and the suit having not been filed in limitation, have been decided in favour of the plaintiff-respondent.

As discussed above, in the present case it appears that the defendants have admitted the execution of the agreement to sale and they have also agreed to have received major part of the consideration and further there is no substantial evidence led by them to show that the plaintiff had failed to perform his part of contract and was not willing to

perform his part of contract, therefore, on the basis of evidence conclusions arrived at by the learned trial court appears to be based on proper appreciation of material available on record.

It has also been argued by learned counsel for the respondent that one of the sons of kartar Singh namely Dalip Singh has got his share in the suit land registered in favour of the plaintiff-respondent which further strengthens the case of the plaintiff. There appears substance in the arguments of the learned counsel. It thus appears that partly the decree has been executed.

A perusal of Ex.3 shows that the Tehsildar has made a report to the effect that 12 bighas of agricultural land situated at Chak 4 APM was in possession of Kartar Singh and was handed-over pursuant to the agreement to sale to Multan Ram son of Ramrakh. It has also been stated that on the day of report i.e. 6.8.1991,

possession on the disputed land was of the plaintiff-respondent.

In view of above discussion, it has been established by evidence led by the plaintiff in this case that the disputed land, description of which has been given in para NO.2 of the plaint, was sold by defendants to the plaintiff under agreement Ex.2 dated 03.02.1986 and at the time of execution of agreement Ex.2, major consideration of the land was obtained by Kartar Singh and subsequently when Kartar Singh did not get the land registered in favour of the plaintiff, a suit for specific performance was filed. I have also carefully examined the evidence available on record and found that no material was brought before the trial court to show that the plaintiff ever failed to perform his part of the contract. In view of above, answer to the points framed by me is that the trial court has correctly considered the matter and rightly disposed of the issues and the plaintiff's suit

was liable to be decreed.

In view of foregoing discussion, judgment and decree dated 31.03.2001 and 11.04.2001 (Amended Decree) passed by learned Addl. District Judge, Anoopgarh, District Sri Ganganagar in Regular Suit No. 104/98(99/91)- Multan Ram Vs. Kartar Singh is required to be confirmed and it is hereby confirmed.

The appeal stands dismissed.

(SATYA PRAKASH PATHAK)J.